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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/547,202	10/11/2006	David L. Dickensheets	MONT-021/000US 306509-2055	7986
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COOLEY GODWARD KRONISH LLP			EXAMINER	
ATTN: Patent Group			BEN, LOHA	
Suite 1100				
777 - 6th Street, NW			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001			2873	
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			01/21/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/547,202	<b>Applicant(s)</b> DICKENSHEETS, DAVID L.
	<b>Examiner</b> LOHA BEN	<b>Art Unit</b> 2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 November 2008.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 3-13,16-22,28-40 and 50-65 is/are withdrawn from consideration.
- 5) Claim(s) 1,2,14,15,23-27 and 41-49 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 November 2008 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-544)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 0807
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1, 2, 14, 15, 23-27 and 41-49 have been elected for examination.

Therefore, non-elected claims 3-13, 16-22, 28-40 and 50-65 are now withdrawn from consideration.

### **QUAYLE ACTION**

This application is in condition for allowance except for the following formal matters:

#### **In the Specification**

Numerals 42 disclosed on at least pages 11, 12, 14 and 16 is not seen illustrated in the drawings. Numeral 53 disclosed on page 12, line 13, is not seen illustrated in the drawings.

Page 13, on line 23, before "48c", "actuators" should be replaced with – mirror portions – (see page 15, lines 15 and 16).

Page 18, on line 25, "6B" should be – 6C --.

Page 23, on line 27, "20" should be – 40 --.

Page 25, on line 13 and line 15 (second occurrence), "microns" should be – micron --.

#### **In the Claims**

In claim 14: on line 2, "the reflective portion" should be replaced with – a reflective portion of the deformable surface –, otherwise the claim is indefinite since (1) no reflective portion has been recited in either claim 1 or claim 2, and (2) it's not certain whether the reflective portion associates with the deformable surface.

In claim 23: on line 1, "1-8" should be replaced with – 1 and 2 --; on line 2, "the" should be replaced with – a --, and "in", with – of --; on line 3, before "housing", "the" should be replaced with – a --; and on line 4, after "fiber", the phrase -- , wherein the housing has first and second ends, and the objective lens is disposed proximate the second end – should be inserted.

In claim 25: on line 2, "and offset to" should be replaced with -- to and offset from --.

In claim 26: on line 1, "1-3, 5, 6 and 8" should be replaced with – 1 and 2 --.

In claim 41: on line 1, "any one of claims 2, 3, 5 and 6" should be replaced with – claim 23 --.

In claim 42: on line 1, "any one of claims 1-4" should be replaced with – claim 23 --.

In claims 43 and 45: on line 1, "lens" should be replaced with – arrangement --, otherwise the claim language is facing a "112/1<sup>st</sup> and 2<sup>nd</sup>" paragraphs situation, since no lens is recited in the body of the claims (inconsistency), and nothing in the disclosure clearly characterizes that the limitations given in the body of each of claims 43 and 45 are equivalent to a dynamic lens.

In claim 45: on line 13, "at least the" should be – the at least --.

In claim 46: on line 3, before "first", -- the -- should be inserted; and on line 4, "member" should be -- portion --.

In claims 47 and 48: on line 1, "45" should be replaced with – 46 – to provide antecedent basis for "the tilting axis" recited in the respective claims.

In order to pave the way for passing the case to issue, claims 3-13, 16-22, 28-40 and 50-65 should now be cancelled.

#### **In the Drawings**

In Fig. 2, numeral "42" disclosed in the specification is not seen illustrated.

In Fig. 3, "48h" appears to indicate two different elements.

In Figs. 7A and 7B, "48r" and "48s" are not disclosed as to what they are.

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

#### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

#### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOHA BEN whose telephone number is (571)272-2323. The examiner can normally be reached on M-SAT, generally between 12:01 p.m. to 8:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack, can be reached on M-F, at (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 15, 2009

/Loha Ben/  
Primary Examiner, Art Unit 2873